

# Exhibit A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 24-CR-50(HG)

:  
:  
-against- : United States Courthouse  
: Brooklyn, New York  
:  
: Monday, September 9, 2024

JOHN RAGANO,  
Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR PRETRIAL CONFERENCE  
BEFORE THE HONORABLE HECTOR GONZALEZ  
UNITED STATES DISTRICT JUDGE

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*Proceedings*

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1 (In open court.)

2 THE COURTROOM DEPUTY: Criminal cause for a pretrial  
3 conference docket 24-CR-50, United States of America versus  
4 Ragano. Parties please state your appearances for the record,  
5 starting with the government.

6 MS. LASH: Good morning, Your Honor. Devon Lash,  
7 Andrew Reich for the United States. And we're joined at  
8 counsel table by Paralegal Specialist Kristina Kim and Special  
9 Agent Joseph Costello of the FBI.

10 THE COURT: Good morning.

11 MR. STEIN: I would say good morning but it might  
12 sound sarcastic given this morning's events. But good  
13 morning, nevertheless, Joel Stein for Mr. Ragano.

14 THE COURT: All in a day's work, Mr. Stein.

15 MR. WOMBLE: And good morning, Your Honor. Ken  
16 Womble on behalf of Mr. Ragano.

17 THE COURT: Good morning, Mr. Womble. Obviously I  
18 heard from the parties that there was something or some reason  
19 why Mr. Ragano was not transported from the MDC.

20 Is there further update on that from the government?

21 MS. LASH: Yes, Your Honor. The government noticed  
22 that Mr. Ragano was not on the production request on Friday  
23 afternoon and put in a request for his production, albeit past  
24 the marshal's deadline. We confirmed that through an email  
25 and a phone call and understood that he would be here this

1 morning.

2 We learned this morning that he was not included on  
3 the list and was not produced. To the extent that it was our  
4 fault for the late request, we apologize to the defense and  
5 the Court for the inconvenience.

6 THE COURT: All right. My plan in today's  
7 conference is to go through and give you my rulings on the in  
8 limine motions. So it's discussing questions of law. So  
9 under Rule 43 I'm within my authority to go forward but I'll  
10 hear from you, Mr. Stein.

11 MR. STEIN: Judge, I understand that if they relate  
12 to a legal matter, we can proceed without our client being  
13 here. My preference, for what it's worth, is that he be here.

14 THE COURT: Yes, look, calendars being what they  
15 are, I want to give you these rulings. I could easily just go  
16 back and type out some text orders and we'd be in the same  
17 place. But I think it's probably better just to hear it and  
18 have a little context around the rulings, so I'm going to go  
19 forward.

20 MR. STEIN: Understood, Judge.

21 THE COURT: All right. And then I can give you,  
22 since I don't think we have anything else scheduled before the  
23 trial date, I'll just quickly walk you through sort of  
24 logistics of jury selection, trial calendar, that sort of  
25 thing.

1 I know the parties have put in requests to charge.  
2 My goal will be to get you my draft of the charge, hopefully  
3 the Thursday or Friday, Friday at the latest before the Monday  
4 when trial starts, and then we'll do the charge conference one  
5 afternoon, late afternoon, after the jury is dismissed.

6 We're still on track for three days, including jury  
7 selection?

8 MS. LASH: Our best estimate, and we're doing this  
9 with only guesses at the length of cross-examination, is if  
10 jury selection concludes on Monday, we believe the  
11 government's evidence would be in Tuesday and Wednesday,  
12 possibly running over to Thursday, depending on the  
13 cross-examinations, but would not exceed the week of  
14 October 7th.

15 THE COURT: All right. So we can talk about this  
16 more when we talk about jury selection. Given that we'll need  
17 to qualify a relatively large panel before peremptories, kind  
18 of viewing this as at a minimum a week long trial just given  
19 the vagaries of jury trials, but we can talk about that in a  
20 little bit.

21 MS. LASH: Your Honor, before you continue with the  
22 in limine rulings, on the jury selections, the government  
23 would object to some of the instructions the defense has  
24 proposed. We're happy to respond in writing, if that would be  
25 amenable to the Court, or we could be heard at the charge

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1 conference if that's a more efficient manner. But we did want  
2 to ask how the Court would proceed on that.

3 THE COURT: On which issues?

4 MS. LASH: On some of the jury instructions that the  
5 defense proposed.

6 THE COURT: You'll see my draft in advance of that  
7 and then address it at the charge conference.

8 MS. LASH: Understood. Thank you.

9 THE COURT: All right.

10 MR. STEIN: Judge, I'm sorry.

11 THE COURT: You can be seated.

12 MR. STEIN: I don't know if you have a list of  
13 things to go through.

14 THE COURT: You can stay in your chair.

15 MR. STEIN: I like to stand up. So the seating in  
16 the courtroom is obviously somewhat limited. I don't know how  
17 many prospective jurors you're going to be bringing in on the  
18 seventh, but I'm going to have probably anywhere from half a  
19 dozen to eight people from my client's family who may be here.

20 I don't know if they're going to be here during jury  
21 selection or just when the testimony starts. So I don't know  
22 if there's like a way to accommodate them in the overflow room  
23 or what.

24 THE COURT: Let's just raise that when we talk  
25 logistics later this morning. But my intention is to fill the

1 gallery completely with the venire panel. So we'll figure  
2 something out. I think on my notes here I've got all the  
3 various in limines, but obviously when we go through all of  
4 them, if I've missed one from either side or more than one,  
5 please let me know.

6 My intention is to get through all of them. So if I  
7 didn't mention one, it's not because I want to linger on it.  
8 So the first one I'm going to discuss, and I don't think I'm  
9 doing this in any particular order, but I'm going to bounce  
10 around a little bit, is -- and some of these are mirror images  
11 of each other. The first one has to do with Mr. Ragano's  
12 guilty plea regarding the extortionate conduct from the  
13 Alimena case.

14 I'm going to, with respect to that -- and just let  
15 me make sure I understand. Is it the government's intention  
16 to introduce the transcript? How does the government propose  
17 that that evidence would come?

18 MR. REICH: So, Your Honor, we've contemplated a  
19 number of ways and wanted to first understand the contour of  
20 what Your Honor's ruling would be today. We envision that  
21 there could be either a stipulation to the guilty plea. We  
22 could admit a certified copy of the judgment in that case, and  
23 we've also contemplated whether or not the allocution itself  
24 would come in in some way, either through a certified copy or  
25 through some other way.

1           THE COURT: My ruling on the motion is that I'm  
2 going to grant the government's motion and deny the  
3 defendant's.

4           I think that the plea in Alimena, given the charges  
5 in this case, is direct evidence of the charges in the instant  
6 indictment, as the charges at least in Counts 1 and 2  
7 reference a continuation of the same loan as in Alimena.  
8 Certainly this is not being introduced for propensity reasons,  
9 and as such, I find that it comes in as for all the  
10 permissible reasons under Rule 404 that it goes to intent, it  
11 goes to knowledge, it goes to absence of mistake.

12           For that reason, I think that the guilty plea is  
13 relevant and admissible. I'll leave it to the parties to  
14 decide how to introduce that, and if you can work out the  
15 stipulation to that effect, that's fine. And obviously, just  
16 so that there's no ambiguity, any stipulation that you do work  
17 out would be on a non-prejudice basis. You obviously will  
18 maintain your objection. I certainly would not want there to  
19 be any chance or risk that it's viewed that any stipulation  
20 you entered into or any agreement logistically that you enter  
21 into is in any way a waiver of your right to have this  
22 argument on appeal, if necessary.

23           Any questions about that motion, Mr. Stein?

24           MR. STEIN: Judge, not really. I mean in all of our  
25 filings we have consistently said that we're not disputing the



1 existence of the loan. It would be foolish, frankly, to do  
2 so. I don't think it's much of an issue at the trial.

3 THE COURT: But the government is still allowed to  
4 show direct evidence of the extortionate scheme, and this is  
5 just an extension of that. So that's the basis for my ruling.

6 MR. STEIN: I understand, Judge.

7 THE COURT: The next what I've been considering sort  
8 of mirror motions is the issue of whether statements by the  
9 individual identified as co-conspirator one are admissible as  
10 statements in furtherance of a conspiracy.

11 I find that they are. So in that respect I'm going  
12 to deny the defendant's motion and grant the government's  
13 motion having to do with co-conspirator one statements. I  
14 find that the government sufficiently has shown, at this stage  
15 at least, by a preponderance the existence of a conspiracy  
16 between the individual identified as co-conspirator one and  
17 the defendant to collect payments from the individual  
18 identified as the victim John Doe by extortionate means, and  
19 that the statements of that co-conspirator occurred during the  
20 time frame of that conspiracy and were made in furtherance of  
21 that conspiracy.

22 I do note that the government further represents  
23 that the recorded statements will be corroborated by the  
24 government's other independent admissible evidence. Obviously  
25 if during the course of the trial the government fails to

1 establish by a preponderance the existence of that conspiracy,  
2 and that the statements were made in furtherance of that  
3 conspiracy, they certainly do that at their peril in terms of  
4 what might happen in terms of modification or some other  
5 instructions, if that doesn't pan out during the trial.

6 As presented to me now, there is sufficient evidence  
7 to find that co-conspirator one is, in fact, a co-conspirator  
8 of Mr. Ragano in the conspiracy to collect on the loan.

9 Any questions about that?

10 MR. REICH: None from the government, Your Honor.

11 THE COURT: Mr. Stein?

12 MR. STEIN: No.

13 THE COURT: I want to turn now to the defense's  
14 motion to exclude conversations, what I'll call the outside  
15 the courtroom conversations. Before I issue my ruling, is  
16 your application limited to the November 15, 2022 or are you  
17 trying to preclude all the conversations that may have  
18 occurred in the hallway, for lack of a better term?

19 MR. STEIN: Our request focused on November 15,  
20 2022. I don't recall off the top of my head how much detail  
21 the government gave as to the other occasions as compared to  
22 November 15, 2022 encounter. But our argument would apply to  
23 all, or should apply to all, the logic of it does. I don't  
24 see any way to distinguish it.

25 THE COURT: I'm denying that motion. I think the

1 evidence regarding conversations that the defendant and John  
2 Doe had at the courthouse on whatever date are relevant and  
3 admissible. These conversations are relevant to proving the  
4 charged offenses, namely that during that time period of those  
5 pre-court hearings in the Alimena case, that the defendant  
6 either attempted to or collected an extension of credit to  
7 John Doe by extortionate means.

8 So any statements by the defendant are also party  
9 admissions. So for those reasons I'm going to allow evidence,  
10 and presumably it's mainly through the testimony of John Doe.  
11 Is that correct?

12 MR. REICH: That's right, Your Honor.

13 THE COURT: That there be discussion of those  
14 conversations. Is that correct?

15 MR. REICH: Your Honor, there may be other witness  
16 testimony, but primarily John Doe.

17 THE COURT: Right. That's why I said maybe.

18 MR. REICH: I just wanted to clarify.

19 THE COURT: Thank you. I want to turn to the  
20 government's motion regarding the defendant's pretrial  
21 supervision conditions. I do have some questions on this and,  
22 in particular, I just want to make sure. I think my  
23 understanding is correct, but before I rule on the motion, I  
24 want to make sure it is. I want to make sure I understand the  
25 interplay of the pretrial supervisions to Counts 3 and 4.

1 Right? Because it only pertains to Counts 3 and 4.

2 So I just want to hear from the government an  
3 outline of Counts 3 and 4 and how the alleged violation of the  
4 pretrial conditions go to Counts 3 and 4.

5 MR. REICH: Sure, Your Honor. I think in a number  
6 of ways. Counts 3 and 4 are respectively harassing a witness  
7 and witness tampering. Those relate to communications between  
8 the defendant and John Doe with the intent and outcome that  
9 John Doe be hindered or prevented from reporting the  
10 defendant's conduct in two respects, two relevant authorities.

11 One being the conduct of continuing to attempt to  
12 collect the loan using extortionate means, and one being the  
13 conduct of violating conditions of pretrial release, including  
14 communicating with John Doe outside the presence of attorneys.  
15 And I think that that goes, as Your Honor mentioned, that is  
16 mainly with respect to Counts 3 and 4. There's some element  
17 of the pretrial conditions that also go to showing the intent  
18 and motive in Counts 1 and 2, as well.

19 The defendant's intentional obfuscation of some of  
20 these pretrial conditions show his awareness that what he was  
21 doing was wrong. So, for example, avoid using his own phone  
22 to contact John Doe because he knew that it was being  
23 monitored by pretrial services or using a middleman,  
24 co-conspirator one, to reach out to John Doe, rather than  
25 doing it himself.

1           So I think the terms of his pretrial conditions are  
2 crucial not just to showing that he was acting with a guilty  
3 conscious and aware of the illegality of his collections as to  
4 Count 1 and 2, but also they go to the very nature of what he  
5 was thwarting John Doe from reporting with respect to Counts 3  
6 and 4.

7           THE COURT: Let me go beyond, then, this motion.  
8 With respect to the references in Counts 3 and 4 to Counts 1  
9 and 2, namely that it is a form of either witness tampering or  
10 harassment of a witness, is the government's theory that that  
11 would be the case in any collection of extortionate credit?  
12 In other words, if you are extorting me for credit, right, so  
13 that there is the independent charge of that, as we have here  
14 in Counts 1 and 2, would I necessarily always be a witness who  
15 can be tampered with, so that in any situation could a victim  
16 of any crime also be charged as the subject, for lack of a  
17 better term, of a witness tampering or a witness harassment  
18 claim?

19           MR. REICH: Your Honor, I think the answer to that  
20 is yes, but there needs to be evidence that the defendant took  
21 actions to stop the victim from reporting the crime.

22           THE COURT: And I assume, then, by that answer that  
23 during the course of the government's proof there will be  
24 proof of that?

25           MR. REICH: That's correct, Your Honor, yes.

1           THE COURT: For both prongs of each of Counts 3 and  
2 4, by that I mean the prong related to the extortionate  
3 collection and the prong related to the pretrial supervision?

4           MR. REICH: That's right. The government intends to  
5 prove both those at trial.

6           THE COURT: Is it the government's position that if  
7 there is a failure of that proof, so that if it's not just I  
8 am the victim of a crime and, therefore, by definition a  
9 witness to that crime, more likely than not that that in and  
10 of itself wouldn't be enough to maintain a witness tampering  
11 or witness harassment?

12           MR. REICH: I think that's correct, Your Honor.  
13 Obviously there -- I'm sorry.

14           THE COURT: There has to be a plus.

15           MR. REICH: There has to be a plus.

16           THE COURT: It's not just your status as a victim,  
17 which by definition makes you a witness?

18           MR. REICH: Correct. It is that plus an effort to  
19 prevent the witness from relaying the information and  
20 revealing the information. Of course each of those Counts 3  
21 and 4, as you noted, have two prongs. So it's either proving  
22 that as to the extortionate conduct or that as to the  
23 violations of pretrial release.

24           THE COURT: Right. So that's certainly -- I don't  
25 want to get into the jury charge issue now, but the government

1 should be prepared to address whether given that each of  
2 Count 3 and 4 has not objects, but I'll use that term loosely,  
3 but two different objects, whether the jury instructions need  
4 to be specific and maybe they are already, I just haven't  
5 gotten into your jury instructions yet, about which of those  
6 offenses need to be demonstrated.

7 MS. LASH: Your Honor, in our -- this is Devon Lash  
8 for the United States. In our jury instructions we simply  
9 listed that either, obviously, either prong is sufficient for  
10 a finding by the jury. The verdict sheet does not specify.  
11 It's not a special interrogatory that says which has the jury  
12 found.

13 We looked into this, as to whether that would be  
14 required, and we believe that it is not. I can provide more  
15 information to the Court in a written filing in advance of the  
16 Court's jury instructions that will lay out why we believe  
17 that these are not objects that would require either special  
18 interrogatories or additional information. As it would in an  
19 alternate scenario where if we charged witness intimidation as  
20 to John Doe one and say just for argument's sake John Doe two,  
21 then it would require the jury to find which John Doe was  
22 intimidated by the charge, which is what happened in one of  
23 the instructions that we've cited underlying the harassment  
24 and tampering charges.

25 The name of the case is escaping me, but I believe

1 it was attachment Exhibit C to our jury instructions. It was  
2 a case in front of Judge Chen that dealt with tampering and  
3 harassment. In that case because the individual who was being  
4 tampered with is legally considered an object of the charge,  
5 it does require the jury to find an additional finding as to  
6 who was being harassed are tampered with. Here we believe  
7 that because these are alternate methods of proof, such  
8 specificity isn't required.

9 THE COURT: So the instruction, again, this is a  
10 question that I will want answered, is -- so, for example, you  
11 can have the jury, six of them, believe that the pretrial  
12 violation condition was, in fact, that that prong was what was  
13 proven, and you can have the other six think that it was the  
14 John Doe, the extortionate collection prong that was proven,  
15 and you don't know need unanimity as to that underlying part  
16 of the charge.

17 MS. LASH: From the review of the case law, that's  
18 what I understand is appropriate here. But we can provide  
19 additional law and reasons for that to the Court. I'm sorry I  
20 don't have that.

21 THE COURT: This wasn't intended as a charge. Look,  
22 obviously those two counts I've been trying to do some level  
23 of thinking on. And so if you can provide some answers in a  
24 letter. Why don't you do that by the 23rd, and, obviously,  
25 Mr. Stein if you could get me something, depending on what



1 they say, if you can get me something early in the week of the  
2 30th, so before the fourth so that I have time to think about  
3 it as I'm drafting the proposed jury charge that I want to  
4 give to you by the fourth.

5 MR. STEIN: Sure, Judge. We can do that. I realize  
6 this isn't a charge conference, but because of the discussion  
7 that's going on we need to point out that we have a problem  
8 with the government's request to charge. I know that they  
9 have attached as Exhibit C, I think it's the Hiller case from  
10 Judge Chen. The indictment in this case charges in Counts 3  
11 and 4 the two prongs as you've referred to them, the violation  
12 of the conditions of release and the extortionate conduct.

13 The indictment alleges it in the conjunctive. It  
14 says "and", and the statute. The indictment alleges that it's  
15 in the "and". Excuse me. It's in the conjunctive, and the  
16 government is arguing that you should charge in the  
17 disjunctive so that they could prove either or. We disagree  
18 with that. I know you haven't set a schedule yet for any  
19 objections to their charges.

20 But if we're correct that they have to be guided by  
21 what's charged in the indictment, which is in the conjunctive,  
22 then it's a whole different ball game as far as this  
23 discussion is concerned.

24 THE COURT: Why don't you brief that in your papers  
25 and you respond, and then we can deal with that in the charge

1 conference.

2 MR. STEIN: Fine.

3 THE COURT: In light of this discussion as it  
4 relates to Mr. Ragano's pretrial supervision conditions, I'm  
5 going to grant the government's motion to admit those pretrial  
6 supervision conditions. Again, I'll leave it to the parties  
7 for the defense's sake on a non-prejudiced basis to figure out  
8 how you want to introduce those, either by stip or whether  
9 it's just maybe the bond condition page.

10 I do find, given the nature of what's charged in  
11 Count 3 and Count 4, and also given the fact that I've  
12 admitted or just ruled that the plea is coming in, I don't see  
13 the fact that he's on pretrial supervision to be any more  
14 prejudicial than to the extent the plea might be deemed  
15 prejudicial.

16 Given that, I think it's, like I said, directly  
17 related to the charges in Counts 3 and 4 and, therefore,  
18 relevant. And in light of the fact that the plea is already  
19 coming in, I'm going to admit the pretrial supervision  
20 conditions to come in but I'll let the parties figure out, if  
21 they can, how they want that to come in. Obviously if there's  
22 disagreement, then you can come back to me on that.

23 Next is the prior convictions of the defendant if he  
24 chooses to testify. I think the -- is the government moving  
25 for the Alimena conviction or in light of my ruling on --

1 because my view is, given what I've allowed already with  
2 respect to the Alimena plea, if he chooses to testify, the  
3 Alimena -- the plea is fair game because it's already come in  
4 for the truth of the matter, not for solely impeachment  
5 purposes.

6 So as I see it, really what's at play is the 2014  
7 conviction and the 2002 fraudulent tax return conviction.

8 MR. REICH: That's right, Your Honor. Because the  
9 government was moving to admit evidence of the Alimena  
10 conviction in its case in chief, we did that separately. And  
11 in this motion that Your Honor is addressing now, we're  
12 referring only to cases that we would bring in should the  
13 defendant testify.

14 THE COURT: And there aren't others? Those are the  
15 only ones?

16 MR. REICH: Those are the only two the government is  
17 moving on, Your Honor.

18 THE COURT: With respect to the 2014 conviction, I'm  
19 going allow that and I'll go through my reasoning in a minute.  
20 I'm not going to allow the 2002 conviction, and I'll go  
21 through my reasoning in a second.

22 With respect to the 2014 conviction, Mr. Ragano pled  
23 guilty to extending a loan with a usurious rate. He received  
24 a sentence of 51 months imprisonment and three years of  
25 supervised release.

1 I find that that conviction does satisfy the  
2 requirements of Rule 609, certainly within the time period.  
3 So the proximity of the crime to this one weighs in favor of  
4 admission. While the debt collection, the fact that it was a  
5 debt collection conviction given the similarities to this case  
6 would normally weigh against admission, I think that a proper  
7 limiting instruction, to the extent the defense wants to offer  
8 one, can deal with that issue.

9 And, certainly, the conviction goes to his  
10 credibility under Rule 609, and the government should be  
11 permitted to probe that as part of impeaching him.

12 The 2002 conviction, I just find that that's too  
13 distant in time. While certainly the nature of that  
14 conviction, fraudulent tax returns, does go to credibility, I  
15 think that on balance, the prejudicial affect given its age  
16 outweighs the probative value and swings in favor of excluding  
17 that conviction.

18 Any questions about that?

19 MR. REICH: No, Your Honor.

20 THE COURT: Mr. Stein?

21 MR. STEIN: No, Judge.

22 THE COURT: The other 609 related motion has to do  
23 with Mr. Ragano's motion to preclude any cross-examination of  
24 a 2006 conviction for the individual who is the -- is he the  
25 owner or shopkeeper?

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1 MR. STEIN: He's the owner, Your Honor.

2 THE COURT: My understanding is that the sole reason  
3 for his testimony and the only thing he's going to be  
4 testifying about is the photos that he took, and sort of  
5 laying the foundation for the admission of those photos. Or  
6 is there more?

7 MR. STEIN: He was not a witness to what happened on  
8 July 5th. I don't believe he was there. He'll identify the  
9 photographs and he'll testify about his understanding of the  
10 system, the video surveillance system.

11 THE COURT: In his own business?

12 MR. STEIN: Correct.

13 THE COURT: And my understanding from the  
14 government's response is that to the extent that that's the  
15 nature and extent of that individual's testimony, that the  
16 government would not seek to try to impeach him with the prior  
17 conviction; is that correct?

18 MR. REICH: That's correct, Your Honor.

19 THE COURT: So assuming those parameters hold, then  
20 I don't see a reason to make a ruling. Obviously if something  
21 changes and this witness is going to be dealing with or  
22 providing testimony that is of a more substantive nature than  
23 strictly sort of a custodian type witness, then I will revisit  
24 this ruling because I do think that the conviction for  
25 falsification of business records, even though it is outside

1 the ten-year window, is something that might be relevant to  
2 the credibility of the witness. But, again, that will be on  
3 balance, depending on the nature and extent of his testimony.

4 For now, based on the parties' representations,  
5 there is no basis to allow examination on that issue, and the  
6 government has indicated that it doesn't intend to do so.

7 The next item is the government's motion to admit  
8 Mr. Ragano's participation in the marijuana scheme. I want to  
9 make sure I understand the setup for this, and if you can tell  
10 me how the marijuana scheme relates to the nature and extent  
11 of the relationship between the defendant and John Doe.

12 MR. REICH: Sure, Your Honor. So I would say that  
13 in the first instance it describes the nature of their  
14 relationship with one another, in that sometime after they met  
15 they began engaging in this, what could be described as a  
16 business venture, illegal business venture together more  
17 importantly.

18 It shows the nature of their relationship such that  
19 there came a time that -- excuse me. I would say that it  
20 lends context to the nature of the ongoing communications  
21 between them, the attempts to collect the loan, the  
22 acquisition of the loan in the first instance. It describes  
23 how they came to know and have a position of trust with one  
24 another.

25 It describes how not only the defendant and the

1 victim, John Doe, came to know one another, but also how the  
2 defendant and the individual we describe as individual one  
3 came to know each other and worked together and begin to  
4 establish a position of trust with one another, such that  
5 admissions were made by the defendant to individual one that  
6 are important in this case, and that the government is going  
7 to emphasize in this case as evidence of the defendant's  
8 intent when it comes to the extortionate collection scheme.

9 THE COURT: Was this based on your evidence? Was  
10 this the first -- were these the first interactions that John  
11 Doe had with the defendant?

12 MR. REICH: These were not the first interactions  
13 with the defendant, no, Your Honor.

14 THE COURT: What about prior, for lack of a better  
15 term, business dealings?

16 MR. REICH: Your Honor, the marijuana scheme does  
17 not pre-date the granting of the loan in the first instance.  
18 And so it is not the government's argument that it necessarily  
19 goes to the circumstances around the loan itself, but much  
20 more to the circumstances around the attempts at extortionate  
21 collection.

22 Parts of that story explain why John Doe would have  
23 fear of these threats and would perceive statements made by  
24 the defendant as threats, and why statements and actions taken  
25 and made by the defendant could be perceived as threats given

1 the way he was known to conduct his business and given the way  
2 these individuals knew him to conduct his business and, you  
3 know, understood his reputation and understood how he viewed  
4 himself.

5 THE COURT: But regardless of whether the schemes  
6 are separate, at least my understanding from the papers is  
7 that they were occurring at the same time; is that correct?

8 MR. REICH: Yes, Your Honor, they were. Yes. What  
9 I would want to emphasize would be not only the way that the  
10 marijuana scheme lends context to the way John Doe perceived  
11 things and understood the defendant and perceived the  
12 defendant, but also the way individual one understood the  
13 defendant and perceived the defendant. And as we reference in  
14 the motion, it also provides the necessary background and  
15 context for the government's motion on reputation evidence.

16 It helps establish that these individuals were all  
17 in the community together, working together, and observing one  
18 another's behavior.

19 THE COURT: One second.

20 MR. STEIN: Judge, could I have a moment?

21 THE COURT: Yes.

22 MR. STEIN: Judge, I think in discussing this it's  
23 somewhat, unless you plan on dealing with it separately,  
24 because the four recordings that we objected to for various  
25 reasons are sort of intertwined with the government's



1 intention to introduce evidence about the marijuana.

2 So I don't know whether you plan on dealing with the  
3 four recordings that we've objected to, but I note that the  
4 government, for lack of a better way to phrase it, lumped the  
5 four recordings with their intention to introduce the  
6 marijuana.

7 MR. REICH: I think, Your Honor, the marijuana  
8 evidence does come in in a couple different ways, one through  
9 witness testimony and one is through the recordings that Mr.  
10 Stein is referring to. I can speak to those recordings, as  
11 well.

12 THE COURT: I thought the issue with the  
13 recordings -- you don't have a separate motion on the  
14 recordings. You're using that as a basis, or am I misreading  
15 your papers?

16 MR. STEIN: They're sort of intertwined. We  
17 objected to the recordings for two reasons, and you've already  
18 dealt with one of them, which is that they're bringing them  
19 up, for lack of a better way to phrase it, was untimely. We  
20 objected to that and you ruled on that.

21 But the second objection, a more substantive  
22 objection, had to do with their relevance. Again, I'm just  
23 bringing this up because the way the government presented this  
24 is that it's intertwined with the marijuana. We object to the  
25 recordings, irrespective of the marijuana conspiracy because

1 of the nature of the recordings, which were discussed in some  
2 detail in our filing.

3 THE COURT: What is the nature of the recordings?  
4 You're challenging --

5 MR. STEIN: Judge, on our filing, which is ECF No.  
6 40, starting at page 4 and going on through page 6, there are  
7 a number of recordings, April 19th and 27th of 2021, June 1st  
8 of 2021, June 2nd of 2021, and June 2nd of 2021, all of which  
9 pre-date the charges in the indictment.

10 But the objection, again, it's because they've  
11 combined this with the marijuana. Our objection to the  
12 recordings is a substantive objection because they are  
13 irrelevant to what is charged in this case.

14 THE COURT: Right. But the recordings speak to, in  
15 part, the marijuana. Correct?

16 MR. REICH: That's right, Your Honor.

17 THE COURT: So depending on how I rule on the --  
18 you're objecting to the marijuana and the evidence that's  
19 going to come in about the marijuana, if I admit it.

20 MR. STEIN: Judge, it seems to me there are two  
21 issues. You may or may not allow some evidence of the  
22 marijuana conspiracy. As a subset, or a separate issue of  
23 that, is whether or not as part of the government's proof of  
24 the marijuana is whether you're going to allow these four  
25 recordings, because the way we interpret them, they're not

1 related to the marijuana conspiracy.

2           They seem to be more of an explanation of the  
3 relationship between Mr. Ragano and individual number one, as  
4 I understand it. I think it's important to understand what  
5 the substance of the recordings are, which the government, I  
6 think, discussed in their submission and we discussed in our  
7 submission. So I could foresee you letting in the marijuana,  
8 even though we've objected to it, but I could also see as a  
9 separate ruling that you don't allow the four recordings.

10           THE COURT: I think the recordings, to the extent  
11 they go beyond -- and the government will correct me -- but to  
12 the extent they go beyond the marijuana, they also speak to  
13 and provide evidence that's relevant to the threat component  
14 of the charges in Counts 1 and 2.

15           MR. STEIN: Judge, that is exactly our point. For  
16 example, on page 5 of our filing, April 19th and April 27th  
17 recordings, having to do with a frankly somewhat volatile, if  
18 not violent, relationship between Mr. Ragano and a former  
19 girlfriend, which the government seems to bring up every time  
20 they have an opportunity to, whether it's bail, sentencing, or  
21 otherwise. That has nothing to do with the marijuana.

22           THE COURT: But it does have to do with his violent  
23 tendencies. And doesn't violent tendency go to the 849  
24 charge? It's part of the threat assessment.

25           MR. STEIN: Okay. Judge, we can debate whether or

1 not we or the government or Your Honor has some perception of  
2 whether Mr. Ragano is a violent individual. But what happened  
3 between him and his girlfriend, about which the government  
4 makes no representation whatsoever that John Doe knew anything  
5 about this, is simply irrelevant.

6 You don't even have to get to a question of whether  
7 it's prejudicial. It's irrelevant. What does slashing his  
8 girlfriend's tires after she slashed his tires, what does that  
9 have to do with anything in this case? I don't see it, Judge.

10 The next recording is June 1, 2021. Again, there's  
11 a question of whether or not John Doe knew anything about  
12 this. The government should not be permitted to just come in  
13 here and throw all this stuff at the wall, which demonstrates,  
14 in their view, that Mr. Ragano is a violent person. It has to  
15 have some relationship to the charges, and if John Doe knew  
16 nothing about this, how is that possibly probative to what  
17 happened in this case.

18 Again, the charges, extortionate collection of  
19 credit. What he did with his girlfriend or these other four  
20 recordings are irrelevant to this case.

21 THE COURT: I don't disagree with you, Mr. Stein.  
22 The threat component has to be -- there has to be a nexus  
23 between the threat and the victim. Right? So what was the  
24 response?

25 MR. REICH: Absolutely, Your Honor. We think these

1 are relevant for a couple of different reasons. Let me first  
2 speak to what you just noted.

3 The government intends to demonstrate that these  
4 conversations, these recordings, all of which were between the  
5 defendant and individual one, created the impression in  
6 individual one's mind that the defendant was someone who was  
7 willing to use violence in business and other situations when  
8 things didn't go his way, and was not only willing not even  
9 specifically that he has used violence, but that he, A) is  
10 willing to and B) is trying to convey to others, wants others  
11 to know that he's willing to. That's the nexus of the  
12 elements at issue in the extortionate collection charges here.

13 THE COURT: Why is that not too attenuated from John  
14 Doe?

15 MR. REICH: Of course, Your Honor. What the  
16 government will demonstrate is that through these  
17 conversations that happened time and time again, the defendant  
18 gave this impression to individual one. Individual one was  
19 then sent to be the collector, he was the go-between between  
20 the defendant and John Doe for the first portion of the  
21 scheme.

22 So individual one, the government will demonstrate  
23 at trial, understood the defendant's reputation, understood  
24 the defendant's willingness and constant willingness to  
25 reference violence and to threaten violence. And when he

1 collected payments from John Doe, he relayed that to John Doe.  
2 So John Doe was very well aware of all these things directly  
3 through individual one.

4 And so I think, Your Honor, that these recordings  
5 are helpful and relevant, both in that the message did  
6 absolutely get to John Doe, but also just in showing the state  
7 of mind and absence of mistake in the defendant when he claims  
8 that he may have tried to make attempts to collect but they  
9 were not, you know, there was no violence or no threat was  
10 intended. We imagine that the defendant will make that  
11 argument at trial.

12 This is directly in contradiction of that, that  
13 certainly he is someone who intends to reference his own  
14 violent reputation and promotes his own violent reputation,  
15 and it goes to his state of mind when he then goes on and  
16 makes collections and actually executes business deals in the  
17 way that he's describing that he does.

18 THE COURT: I assume, Mr. Stein, I have to take the  
19 government at its word in terms of what the evidence will  
20 show, but if there is a nexus -- I'm not saying it has to be a  
21 verbatim recounting by John Doe, I mean by individual one to  
22 John Doe, but if part of the conversations that individual one  
23 effectively as the agent of the defendant has with John Doe,  
24 speak to the violent tendencies of the defendant, in part from  
25 information that the defendant has conveyed to individual one,

1 I do believe that's relevant to the 849 charge.

2 MR. STEIN: Well, I understand what you're saying.  
3 You have to accept what the government is representing. I can  
4 tell you, since I tried to study what the government was  
5 representing when they filed their request, is I don't believe  
6 there was any reference in their filing. If I'm mistaken, I'm  
7 sure they'll correct me. I don't believe there was any  
8 reference in their filing to individual one having  
9 communicated this to John Doe.

10 If I've overlooked that, then I'm stuck with that,  
11 but I don't recall anything in their filing about it. Indeed  
12 as to all these recordings we said, what does this have to do  
13 with John Doe.

14 THE COURT: So until the trial I'm not going to  
15 know. But I guess my guidance to the government is that I  
16 want to make sure that there is a nexus and that that nexus is  
17 not too attenuated. So I'm going to allow the marijuana  
18 scheme. I do find that the evidence proffered regarding the  
19 marijuana scheme is intertwined with the evidence regarding  
20 the charged offense. It occurred during the same time period  
21 as the original extortionate collection of credit of John Doe.  
22 It also involved John Doe and individual one, an individual  
23 who the government has represented will testify about the  
24 scheme and testify about the defendant's recorded statements.

25 I am finding, based on these representations, that

1 the testimony and the defendant's statements to individual one  
2 provide context to the interactions among the defendant and  
3 others, and that all these things are relevant to the threat  
4 element of Counts 1 and 2.

5 But like I just started to say, there has to be a  
6 nexus. It just can't be any and everything having to do with  
7 violence on the part of defendant automatically goes to the  
8 849 threat prong.

9 So this is just a caution that I'm allowing a fair  
10 amount of evidence in here to go to that threat component, but  
11 that to the extent the government can revisit this, and you  
12 can discuss this with the defense, if something even as  
13 remotely attenuated and it comes out during the trial and Mr.  
14 Stein makes an objection or seeks some sort of curative  
15 instruction in that regard, I will be very open to do that.

16 MR. STEIN: Excuse me, Judge.

17 MS. LASH: Your Honor, one more point on this issue.

18 MR. STEIN: Just hold on for one minute. Judge,  
19 you're going to allow this in. I understand what your ruling  
20 is subject to the government producing a nexus that is  
21 sufficient for you. And then, if it turns out the nexus is  
22 not sufficiently established, you're going to give a curative  
23 instruction.

24 Frankly, Judge, with all due respect, when I hear  
25 judges telling me they're going to give a curative



1 instruction, all I can think of is you can't unring the bell.  
2 This isn't just some minor thing. They want to make him out  
3 to be the most violent person they possibly can.

4 THE COURT: Let me interrupt. What are the specific  
5 calls, recordings or items that you believe have no nexus to  
6 John Doe, the victim?

7 MR. STEIN: The four recordings that are referred to  
8 in our filing.

9 THE COURT: You think all four have no nexus?

10 MR. STEIN: Judge, here is the problem. As I said,  
11 I think correctly, that in their filing they did not represent  
12 anything which connected these recordings to John Doe. Now  
13 the government is saying by way of I guess an offer of proof  
14 that they do have that evidence. Well, we don't know anything  
15 about that. We don't have the 3500 material.

16 It's not going to be produced until I believe  
17 September 30th, and we're arguing in a vacuum really to what  
18 they're representing to the Court.

19 THE COURT: Let me interrupt you. Even by your own  
20 descriptions in document 40, right, so the April 19th and 27th  
21 recordings, right, has to do with the dispute with the  
22 girlfriend and the slashed tires.

23 MR. STEIN: Correct.

24 THE COURT: I hear you on that one. My expectation  
25 is that based on what I've said to the government that before

1 that recording comes in, there has to be some nexus  
2 established that somehow, and I'm making it up, but individual  
3 one will testify that yeah, when I told John Doe who he was  
4 dealing with, I told him boy, this is a scary guy, and just  
5 the other day he told me he slashed his girlfriend's tires.

6 MR. STEIN: After she slashed his tires.

7 THE COURT: Whatever. I mean, if someone commits an  
8 offense against me it doesn't give me a right to go commit an  
9 offense against them. Whether there is a basis in the law of  
10 the jungle that you can do that, all I'm saying is I was  
11 laying out the hypothetical for what I would view as a  
12 sufficient nexus.

13 MR. STEIN: Here's the problem, which I don't mean  
14 to be repetitive, Judge. We pointed out in our arguments as  
15 to these four recordings that there wasn't a connection to  
16 John Doe, and the government is now representing that there  
17 is.

18 So we're having a discussion here in which, frankly,  
19 we are at a disadvantage because we knew nothing about some  
20 nexus to John Doe. The government is making the  
21 representation, I heard it, and I also did not hear the  
22 government correcting me that there was no representation  
23 about a nexus to John Doe in their filings.

24 MR. REICH: Your Honor, I would like to correct --

25 THE COURT: No, no, no. Of the four conversations

1 that you outline in document 40, in your response to the  
2 motion, only the April 19th and 27th one has to do with the  
3 tire slashing. Everything else has to do with the marijuana.  
4 So the marijuana I've already given my reasons about why the  
5 marijuana conspiracy is relevant to the charges in this  
6 indictment.

7 MR. STEIN: Judge, I don't agree with you to some  
8 extent because the June 2, 2021 conversation, on page 6 of our  
9 filing, had to do with an incident that we don't know when it  
10 happened because it's not documented in any way. There was no  
11 arrest.

12 Mr. Ragano, for lack of a better way to describe it,  
13 bragged about hitting someone over the head with a beer  
14 bottle. It had nothing to do with the marijuana scheme. We  
15 don't know when it happened or if any relationship --

16 THE COURT: Here's what I'm telling you and here's  
17 what I'm telling the government. If the discussion has to do  
18 with the marijuana scheme, I've already said that that's  
19 relevant and it's coming in. If the discussion has to do with  
20 some purported act of violence on the part of the defendant,  
21 whether that be the tire slashing or hitting someone over the  
22 head with a beer bottle, before those recordings can come in  
23 through testimony, the government will need to establish that  
24 there is a nexus of those statements to some either -- I don't  
25 want to pre-judge but there has to be a nexus that is not

1 attenuated, that somehow flows from individual one to John Doe  
2 as indicative of the defendant, Mr. Ragano's willingness to  
3 commit acts of violence as a threat components of the 849  
4 charge.

5 MR. STEIN: Judge, then I would ask that you require  
6 the government to make an offer of proof outside the presence  
7 of the jury so we don't have this unringing of the bell  
8 problem.

9 THE COURT: That's what I just said. I said before  
10 they offer the recordings, they will have had to have made  
11 that showing through the witness stand.

12 MR. STEIN: I'm sorry. I didn't understand it.  
13 That would be outside the presence of the jury?

14 THE COURT: No. The way I see this happening, in  
15 order for those two topics that I just addressed to be  
16 admitted as independent evidence, the tapes, would be, for  
17 example, individual one saying -- and again, I'm making it up,  
18 I don't know what individual one will say -- but something  
19 consistent with individual one saying I was dealing with John  
20 Doe about this debt that he had to Ragano.

21 I was nervous, I was whatever, I told him Ragano is  
22 a serious guy, you know, you better pay up, he's been known to  
23 do crazy stuff like slash the tires, hit some guy, there has  
24 to be a nexus to the act of violence.

25 Otherwise, then at that point if the government then

1 moves, they will have established, and I'll know what they're  
2 doing, if they haven't established you'll make your objection  
3 and say Your Honor, they're about to introduce the April 19th  
4 and 27th tapes that go to the tire slashing. I didn't hear  
5 anything about that being conveyed in some fashion to Ragano.

6 Is that a clear articulation of how I would want the  
7 nexus to be made?

8 MR. REICH: Absolutely, Your Honor. Yes.

9 THE COURT: Does that comport with --

10 MR. STEIN: Understood, Judge.

11 THE COURT: But is that consistent with your doing  
12 that before the bell is rung?

13 MR. STEIN: Yes.

14 THE COURT: All right.

15 MR. REICH: Your Honor, I just want to relay on the  
16 record, if defendant -- if Mr. Stein is looking for where the  
17 government first made the argument making the nexus to John  
18 Doe, I don't want him to feel surprised. He can look in our  
19 brief at pages 31 to 32, and that explains exactly what I was  
20 relaying to Your Honor of the chain of communication from  
21 these statements to individual one to John Doe.

22 THE COURT: All right. Mr. Stein, I am putting the  
23 burden on your shoulders, not the burden of proof, just the  
24 burden if government is moving to move that piece of exhibit  
25 in and you still have that same objection that you've

1 articulated because you don't believe that they've laid the  
2 proper foundation by way of a nexus or it's too attenuated,  
3 it's incumbent on you to make that objection.

4 MR. STEIN: Understood.

5 THE COURT: The next motion has to do with the  
6 defendant's affiliation with organized crime. I think that  
7 that's relevant under the circumstances of the charged  
8 offenses, the 849 offenses. Again, I think that's intertwined  
9 with the evidence regarding those charges.

10 In terms of the factual background, at least as has  
11 been represented, is that the defendant allegedly learned of  
12 the opportunity, the loan sharking opportunity, through  
13 members of the Colombo crime family. He's purportedly a  
14 member of the Bonanno crime family, but nevertheless, his  
15 affiliation with organized crime provides the background  
16 information for the charged offense.

17 Section 849 includes as an element that the  
18 defendant knowing and intentionally participated in the use of  
19 extortionate means, which obviously have been defined to  
20 include purported acts of violence, and that, therefore, his  
21 reputation of involvement with organized crime provides a  
22 proper foundation to show that the defendant was aware of his  
23 own reputation and that he expected it would induce fear in  
24 the ordinary person, in this case the alleged victim, John  
25 Doe.

1           So for those reasons, I'm going to allow reference  
2 to his membership in organized crime. Again, I caution the  
3 government that this is not a RICO case. So that reference  
4 should not take up too much time and should not become a mini  
5 trial in terms of proving that the defendant is, in fact, a  
6 member of the Bonanno family.

7           But some reference to that, I believe, is  
8 appropriate given the nature of the charges. I am going to  
9 preclude, though, reference to the defendant's nickname of  
10 Maniac. I find that that is more prejudicial than probative,  
11 especially here where I'm permitting reference to his  
12 affiliation with organized crime.

13           That, then, sort of segue ways into the motion of  
14 the victim reference for John Doe. I'm not going to limit the  
15 use of victim as a rhetorical device during arguments. But  
16 I'm going to -- there's no need to describe John Doe as the  
17 victim during your questions, you, being the government. For  
18 example, if the agent is on the stand and, again, I'm making  
19 up a question, you know, that says when you spoke to so and  
20 so, meaning John Doe, I would want him referred to as Mr. Doe,  
21 or whatever his name is, not when you spoke to the victim.

22           So I'm allowing the government to use victim as a  
23 rhetorical device in its arguments, so the opening summation  
24 and its rebuttal. But during the course of the trial when  
25 we're talking about the facts of the case, that individual

1 will be referred to by his name or a nickname, whatever anyone  
2 knew him as, but not as the victim.

3 Any questions on that ruling?

4 MR. REICH: No, Your Honor.

5 THE COURT: The government had made a motion, which  
6 I think is mooted out by the defense response on this issue of  
7 selective prosecution, which I don't think is what the defense  
8 was arguing. But given the defense's response that it's not  
9 contending that there was a selective prosecution in this  
10 case, I don't see that motion as one that needs to be ruled  
11 on.

12 I will say, just going to, I guess, it's something  
13 that will come up in the charge, but I'm not intending, to the  
14 extent that it's relevant for this purpose, I'm not intending  
15 to charge the jury that they can draw a negative inference  
16 from the fact that the government didn't have surveillance  
17 footage from the courtroom hallway or from the auto parts  
18 shop.

19 I'm going to give my standard instruction on the  
20 particular investigative technique not required, which is a  
21 pretty standard charge, but I'm not going to be saying  
22 anything more about investigative techniques.

23 MR. STEIN: Judge, I would ask that incorporated  
24 into your instruction about investigative techniques, that you  
25 remind the jury that the burden of proof is upon the



1 government beyond a reasonable doubt, which can be based on  
2 the evidence or lack of evidence.

3 THE COURT: That's part of the standard charge.

4 MR. STEIN: I'm asking that it be specifically  
5 incorporated in the instruction that you give on investigative  
6 techniques.

7 THE COURT: I'll read it to you right now what I'm  
8 going to say. There is no legal requirement that  
9 law enforcement agents investigate crimes in a particular way,  
10 or that the government prove its case through any particular  
11 means.

12 While you're carefully to consider the  
13 law enforcement evidence introduced by the government, you are  
14 not to speculate as to why they used the techniques they did  
15 or why they did not use other techniques. The government is  
16 not on trial. Law enforcement techniques are not your  
17 concern. Your concern is to determine whether on the evidence  
18 or lack of evidence the government has proven its case beyond  
19 a reasonable doubt. So I think that motion is moot, unless  
20 someone thinks it isn't.

21 MR. REICH: To expand a little bit, Your Honor, on  
22 the government's concern. I think counsel has made it clear  
23 throughout proceedings that they may intend to introduce an  
24 argument that somehow John Doe and the FBI conspired or were  
25 in cahoots to create a case against the defendant where none

1   existed.

2               That's, I think, one of the things that the  
3   government really wants to get to here. It's been sort of  
4   alluded to in the defendant's motions. Certainly we think  
5   it's one thing to, for example, as to the July 5th incident,  
6   it's one thing to allude to the defendant, the reasons why the  
7   defendant may have made statements that he made, he was riled  
8   up, X,Y,Z, it's another thing to say the FBI and John Doe  
9   colluded to set him up or entrap him in some way, which as  
10   Your Honor knows, is a very different area that we don't  
11   believe we've weighed into. We want to raise that idea  
12   specifically.

13              THE COURT: Well, certainly, it's a little too late  
14   in the day to raise an entrapment defense.

15              MR. STEIN: We never used that word anyway.

16              MR. REICH: The point here though is not to sort of  
17   back door an entrapment defense without proving the elements  
18   of one.

19              MR. STEIN: Judge, this is very important. They  
20   started the investigation in this case in November of 2022.  
21   Up until July 5th there were various recordings that were made  
22   between, it's hard to remember all the descriptions,  
23   co-conspirator number one and John Doe, which we've contended  
24   were not attempts to collection by extortionate means until we  
25   got to July 5th.

1           So they're spending, I assume, a fair amount of  
2 resources starting from November of 2022 up until July 5,  
3 2023. In our opinion, they came up with very little, if  
4 anything, that constitutes an extortionate attempt to collect  
5 the loan.

6           So on July 5, 2023, John Doe is recording  
7 conversations. I'm pretty sure he wasn't out there  
8 freelancing on his own, and before he met Mr. Ragano at his  
9 place of business, there was a meeting. Of course I wasn't  
10 privy to it. Mr. Ragano wasn't privy to it. There was a  
11 meeting between John Doe and the agents. Indeed, after the  
12 encounter at Mr. Ragano's business, there's a brief recording  
13 with John Doe speaking to the agents. So they were obviously  
14 monitoring what was going on. They're not going to send  
15 somebody out who's cooperating to just freelance on his own.

16           I think it's a fair argument to say that after many  
17 months of coming up with very little, if any, evidence of an  
18 extortionate attempt to collect a loan, that there was some  
19 plan when John Doe went to Mr. Ragano's office. And I think  
20 it's fair comment on us that that's what happened.

21           THE COURT: Can you ask John Doe on cross, you know,  
22 before the July 5th meeting did you have any discussions with  
23 the government, including the prosecutor's office and the FBI?  
24 Of course you can ask that. What did they tell you? You can  
25 ask that.

1           Are you free to make an argument that up until  
2 July 5th there was no evidence but -- I don't know --  
3 hopefully your argument is not going to be, but then on  
4 July 5th there is evidence but it was premeditated or  
5 prefabricated by the government and you should discount it.  
6 That would be an admission.

7           MR. STEIN: I didn't say there was no evidence, I  
8 said very little, if any, evidence. It's not surprising that  
9 five days after this incident at Mr. Ragano's office on  
10 July 5th, Mr. Ragano was surrendering to begin his 57-month  
11 sentence. I don't think it's a coincidence that after many  
12 months of what we believe was basically absence of any  
13 convincing evidence of an extortionate attempt to collect the  
14 loan, that on this occasion John Doe goes to his office.

15           THE COURT: I don't think anyone is saying that John  
16 Doe -- I can't imagine John Doe -- I agree with you. I don't  
17 know, but I can't imagine John Doe went there on his own.  
18 Listening to the recording, as I did, it's clear that the  
19 agent was monitoring what was happening.

20           MR. STEIN: As I understand what the government is  
21 arguing now, they want to be able to preclude us from arguing  
22 that what happened on July 5th was part of a plan that was  
23 conceived of, plan obviously is my word, that was preconceived  
24 by John Doe who was being monitored by the agents. That's  
25 fair comment. If they want to deny that or they have their

1 argument and their rebuttal summation, fine.

2 THE COURT: Hold on for a second. Is your question  
3 whether the idea to go visit Ragano on July 5th, that John Doe  
4 went to the case agent and said hey, I think it would be a  
5 good idea for me to go?

6 MR. STEIN: That's not what happened, Judge.  
7 There's a recording.

8 THE COURT: I've listened to that recording.

9 MR. STEIN: There's a recording that pre-dated  
10 July 5th.

11 THE COURT: Yes, about just show up and do I need to  
12 not make an appointment but is there a specific day; no, just  
13 show up, he works these days. I listened to all the  
14 recordings.

15 MR. STEIN: Correct.

16 THE COURT: It's fair game for you to say, look,  
17 ladies and gentlemen, Mr. Ragano was set to surrender -- what  
18 day was he set to surrender?

19 MR. STEIN: July 10th.

20 THE COURT: On July 10th, and the government was so  
21 desperate because they had no evidence that they wanted to  
22 send this guy in one more time to see if he would say  
23 something incriminating. That's fair argument. You're  
24 allowed. If the government tells me that I shouldn't let that  
25 in, I'll hear it. But I'm going to let you argue that.

1           MR. STEIN: Maybe we're not -- this is unnecessary  
2 but I thought the argument was being made that we shouldn't be  
3 able to argue that this is what happened between John Doe and  
4 the agents.

5           THE COURT: There doesn't seem to be a dispute that,  
6 and maybe the government will correct me, but there doesn't  
7 seem to be a dispute that July 5th was a coordinated  
8 investigative technique to send in John Doe to elicit, if  
9 possible, incriminating statements from your client. I expect  
10 the government to do that in an investigation.

11           And you can -- if your argument is that somehow  
12 that's improper, that I won't allow because there's nothing  
13 improper about that. If your argument is that the reason they  
14 needed to do that is because the evidence they spent a year  
15 investigating this guy and they were desperate because in five  
16 more days and he was going to prison and they wanted to try to  
17 get something, that's fair argument. You can make that  
18 argument. Is the government seeing it differently than I'm  
19 seeing it?

20           MR. REICH: I think that's right, Your Honor. But  
21 to expand on it, I think another improper argument here would  
22 be to say that the FBI and John Doe induced Mr. Ragano to  
23 commit a crime. That, again, is entrapment.

24           THE COURT: I don't hear that from Mr. Stein, but if  
25 I did I would not allow that.

1 MR. STEIN: Judge, you have to remember what  
2 happened here on July 5th. John Doe goes in there --

3 THE COURT: It's literally like 48 seconds or  
4 something, or three minutes, whatever. I can't even imagine  
5 there's enough time for the guys to take his clothes off,  
6 which is one of things. I have that tape in my head. It  
7 takes no time.

8 He goes in, there's the screaming, he accuses him,  
9 the ruse that you'll say is that John Doe accuses Ragano of  
10 being the cooperator and that that was done in an attempt to  
11 rile him up.

12 MR. STEIN: Correct.

13 THE COURT: Fine. That's what happened. You're  
14 allowed to say, when you went in there you knew what you were  
15 going to say, however you want to cross him. But if any  
16 portion of the argument is that somehow there was no -- that  
17 the loan was something that the FBI in cahoots with John Doe  
18 said hey, why don't you go in there and offer to borrow money  
19 from this guy so that he can then threaten to knock your head  
20 off, there's zero evidence of that and I'm not going to allow  
21 any argument along those lines.

22 Anything else on this motion?

23 MR. REICH: No, Your Honor. Thank you.

24 THE COURT: In keeping with the July 5th, 2023  
25 conversation --

1           MR. STEIN: Judge, I'm sorry to interrupt. I just  
2 want to make sure because obviously this is a very important  
3 occasion. It's not just the conversation, but the presence of  
4 the two employees. I just want --

5           THE COURT: That's where I'm going now.

6           MR. STEIN: I want to make sure because it was in a  
7 footnote. I'm sure Your Honor is very careful. But  
8 respectfully, you had misspoke in a previous order in which  
9 you had written that during the course of this incident the  
10 two employees were behind John Doe, which was frankly from the  
11 government's representation of what happened incorrect,  
12 because they represented that the two individuals were behind  
13 Mr. Ragano, which is of some significance since we're arguing  
14 that this is irrelevant and he didn't know anything about them  
15 because they were behind him, as well as the fact that nothing  
16 was said.

17           THE COURT: If I misrepresented or misnoted where  
18 they were standing, I think there's no question from listening  
19 to the tape that John Doe was aware of the presence of these  
20 individuals, whether they were behind him at some point or in  
21 front of him, I don't know. And if I got that wrong in the  
22 record, apologies. But there's clearly no doubt from the  
23 recording that he was aware of the presence of the two  
24 individuals.

25           MR. STEIN: Judge, maybe your recollection is better



1 and maybe theirs is better than mine, but I don't think  
2 there's anything in the tape from which one could conclude  
3 that Mr. Ragano was aware --

4 THE COURT: Oh, that Mr. Ragano was aware. Oh,  
5 that's not what I was saying. I was saying that from my  
6 perspective the important thing from a perceived threat is  
7 that the victim is aware of it.

8 MR. STEIN: Correct, Judge. That's a different  
9 point. The argument that we're making as to why the presence  
10 of the two other employees is irrelevant is, for among other  
11 reasons, Mr. Ragano did not know anything about them because  
12 there's no recording, there's no statement that Mr. Ragano  
13 himself knew about those two individuals, and that's why I  
14 brought up the point that the government represented that the  
15 two individuals were behind Mr. Ragano so he wouldn't have  
16 seen them.

17 THE COURT: I see that. Look, that's fair argument  
18 but I think the point of why this is relevant is that when  
19 you -- it's whether something is reasonably -- you can  
20 reasonably infer, right?

21 Before July 5th you have indication from, I'm losing  
22 my monikers, I guess it's co-conspirator one.

23 MR. REICH: Yes, Your Honor.

24 THE COURT: Co-conspirator one dealing with John  
25 Doe. Co-conspirator one saying, effectively, Ragano wants you

1 to show up at his place of business. Don't worry, just show  
2 up, he works these hours. He then shows up. There's the  
3 screaming match. You can argue who instigated the screaming  
4 match, and then the two fellows, one with the tire iron, one  
5 with the crowbar shows up.

6 Obviously I know you have no burden, but in terms of  
7 examining John Doe or the agent, you have every right to argue  
8 that Ragano has no knowledge of this and the government has  
9 every right to argue that the reason that Ragano wanted John  
10 Doe to show up there is because he knew he had support there.

11 MR. STEIN: Judge, the point of what I'm trying to  
12 argue is that I understand we can argue all this, and the  
13 government can argue all this if you let it in. We're arguing  
14 that this should be excluded because it's irrelevant as to  
15 what Mr. Ragano knew that these other two individuals were  
16 doing.

17 Again, they were behind him. There's nothing in the  
18 recording of which they said anything threatening, or that Mr.  
19 Ragano said anything in reference to these two individuals.  
20 So I think it's incumbent upon the Court to make a ruling on  
21 how this is relevant, not whether or not we can cross-examine  
22 on it.

23 THE COURT: That's the background that I was laying  
24 of why I think it is relevant. I think it's relevant because  
25 it was Ragano who wanted John Doe to show up at his place of

1 business, and I think it's reasonable to infer that one of the  
2 reasons he wanted that was to be on home turf because he knew  
3 that on home turf he had support there.

4 MR. STEIN: I don't think that's a reasonable  
5 argument at all to make, at all.

6 THE COURT: Okay. You have your objection.

7 MR. STEIN: Okay.

8 THE COURT: Is there some other theory that the  
9 government wants to propound as to why evidence regarding the  
10 co-worker's actions is relevant?

11 MR. REICH: It's exactly as you explained it, Your  
12 Honor.

13 MR. STEIN: The reason that he, John Doe, went there  
14 is because Mr. Ragano was working six days a week at this  
15 place of business, including on Saturdays. On Sundays, with  
16 the Court's permission, he went to church, which I believe he  
17 did just about every Sunday with his sister.

18 So the reason why there was a discussion about where  
19 they could meet is because Mr. Ragano was otherwise not  
20 available. John Doe is not going to go to Mr. Ragano's  
21 residence where he was residing with a family member in  
22 another part of Long Island.

23 THE COURT: That's all fine. But that doesn't take  
24 away from the inferences that I just laid out, the fact that  
25 he worked X number of hours and that he told him to just show

1 up there, I don't see that taking away from the inferences  
2 that I just laid out.

3 With respect to -- related to this, I do find that  
4 John Doe's statements to law enforcement after he ran out of  
5 the shop, that those are excited utterances. I've listened to  
6 that tape, that it was made, I think my counting on it was  
7 within 40 seconds. I can hear the tenor and tone of the voice  
8 of John Doe, and I think those are clearly, certainly satisfy  
9 the excited utterance. I think they would also be permissible  
10 to admit that under the present sense impression. I don't  
11 think I need to get there because I think there's no doubt  
12 that they were excited utterances.

13 I think the final thing is statements by Mr. Ragano  
14 in the holding cell related to his arrest of Alimena. I think  
15 that some of those statements go to his intent to cause fear,  
16 or at least to give the impression of someone who is willing  
17 to carry through on explicit or implicit threats of violence  
18 as necessary for Counts 1 and 2.

19 I don't believe all five of them are, and I think  
20 some are more prejudicial than probative. So I think the ones  
21 I'm going to permit on these reasons are the ones having to do  
22 with that he had been in a holding cell many times before,  
23 that he did not fear going to prison, and that he had used  
24 violence against inmates who challenged him.

25 I don't think the other ones, never waiting in line

1 for the communal microwave, or telling others in the holding  
2 cell to move over so he can take a nap, those seem petty to me  
3 and on balance the first three are more than enough to make  
4 the point about the defendant's ability to carry through on  
5 threats or to give the impression that he was someone who  
6 could carry through on extortionate threats.

7           Again, since the fact that he's in a holding cell,  
8 given the evidence that's already coming in regarding that he  
9 pled guilty, there's no question that he would have been  
10 arrested as part of that guilty plea. So I don't find that  
11 that is unduly prejudicial. Mr. Stein?

12           MR. STEIN: Nothing, Judge.

13           THE COURT: I think --

14           MR. STEIN: I'm sorry, there is. As to the part  
15 that you're allowing in or you're considering allowing in  
16 about his being used to being in jail, I'm paraphrasing, I'm  
17 not sure how that demonstrates, or he's not afraid of going to  
18 jail, how that affects anything having to do with collecting a  
19 loan.

20           THE COURT: Which one, that he had been in a holding  
21 cell so many times before or that he didn't fear going to  
22 prison?

23           MR. STEIN: Didn't fear going to prison. Actually,  
24 both, for the same reason, Judge.

25           THE COURT: I do think that maybe we are warped, but

1 I think the average individual would be afraid to go to  
2 prison, unless they thought they knew how to handle themselves  
3 in prison.

4 MR. STEIN: My point --

5 THE COURT: Hold on. Hold on. I'm rethinking my  
6 decision.

7 MR. REICH: Your Honor, there's another point I  
8 could make, if it could be helpful, which is not only what  
9 Your Honor just said about not being fearful of going to  
10 prison because of the circumstances inside prison, but also  
11 just not being fearful of committing crimes and, therefore,  
12 going to prison. Saying I'm not afraid to go back to jail is,  
13 in essence, a threat that I'm not afraid to break the law.

14 THE COURT: I don't know if I view it the same way.  
15 I think it's more about sort of bravado.

16 MR. REICH: We do think that John Doe will testify  
17 that he interpreted it that way.

18 THE COURT: Which way?

19 MR. REICH: He interpreted it to mean that this was  
20 an individual saying I'm not afraid to commit more crimes and  
21 go back to jail.

22 MR. STEIN: Judge, to use your phrase, although I  
23 think we use it in our papers somewhere, what is the nexus  
24 between collecting the loan?

25 THE COURT: It goes to the threat element, that if

1 you are someone who has the bravado that you have no fear of  
2 being in prison, that certainly goes to creating an atmosphere  
3 of prisons are -- if this was a sentencing right now, you  
4 would tell me about how violence prisons are and someone who  
5 is not afraid of that is presumably someone who is capable of  
6 dealing with violence, whether by taking it or giving it.

7 I'm going to, in addition to the two that I said I  
8 was going to preclude, I'm going to also preclude the one  
9 about being in a holding cell many times before. As I think  
10 about it, and as Mr. Stein argued, there is a chance that that  
11 might go too much to propensity. But I do think that not  
12 having the fear to go to prison and using violence, that he's  
13 used violence against inmates who challenged him, that there's  
14 no number of times associated with that. So there isn't the  
15 possibility that the jury would think oh, this guy has been in  
16 prison 20 times.

17 So I'm only going to allow those two in, to be  
18 clear. So it's the one that he did not fear going to prison  
19 and that he had used violence against inmates who challenged  
20 him. The other ones I'm excluding, which means that to the  
21 extent the government needs to examine John Doe in a leading  
22 fashion in order to elicit just those two statements, I give  
23 you leeway to do that so that we don't run the risk that he'll  
24 say other things that he heard while in a holding cell.

25 MS. LASH: We understand, Your Honor. I'll note,

1 just for the record, that the comment about not waiting in  
2 line for the microwave related to his use of violence against  
3 inmates, or at least John Doe would testify that he understood  
4 he didn't wait in line for the microwave because he would use  
5 violence if someone challenged him.

6 THE COURT: If you need the microwave with what you  
7 believe is going to come out about Mr. Ragano, then I don't  
8 think we have -- if that's what's going to tip the scale on  
9 whether the jury believes that Ragano is willing to use  
10 violence, then I'm willing to take that risk from an  
11 evidentiary perspective. I just think that's more than  
12 enough.

13 MS. LASH: We understand. I'm just providing that  
14 microwave context for the Court and the defense's knowledge.

15 THE COURT: Like I said, given my ruling there, you  
16 do need to make sure that the witness does not step into those  
17 other statements. I know I've kept you. If we could just  
18 wrap this up in about 10 minutes.

19 MR. STEIN: Judge, there are some other things we  
20 wanted to bring up.

21 THE COURT: Let's do logistics so I know I get that  
22 out of the way. We're going to start jury selection on the  
23 seventh. My thought, given the time estimate for the -- let  
24 me be clear. Anything else on in limine?

25 MR. REICH: Yes, Your Honor. We have a couple items



1 we want to raise on in limine.

2 THE COURT: That were briefed and I failed to  
3 address them?

4 MR. REICH: There's a couple that the government  
5 mentioned in its motion, yes, Your Honor.

6 THE COURT: Okay.

7 MR. REICH: There was a note in the government's  
8 motion in the discussion of the marijuana scheme and the  
9 importance of that particular scheme to provide context to the  
10 current conduct. There was a note about a similar scheme  
11 involving the fake OSHA certifications.

12 The government would move to be able to discuss the  
13 OSHA scheme as well for the same reasons why it was important  
14 to discuss the marijuana scheme. This is a scheme that  
15 individual one was involved with Mr. Ragano. This was a  
16 scheme --

17 THE COURT: Was John Doe involved?

18 MR. REICH: John Doe was not involved in that  
19 scheme.

20 THE COURT: I'm not going to allow it. Look, I  
21 mean, the threat tent is a big tent but it's not limitless.

22 MR. REICH: We don't expect that that really has  
23 anything to do with the threats, Your Honor. Part of it is  
24 individual one met Mr. Ragano in the context of working at the  
25 OSHA school. And so he began teaching classes for Mr. Ragano

1 at the OSHA school. He ultimately was asked to start doing  
2 these false OSHA certifications.

3 THE COURT: Unless the defense opens the door by  
4 examining him on that, then I give you license to not elicit  
5 that from him as a prior bad act with the understanding that  
6 the defendant is not going to go into it.

7 If the defense goes into it, then --

8 MR. REICH: We are going to -- individual one did  
9 plead guilty to a number of crimes and the OSHA scheme was one  
10 of them. We did intend to go into that.

11 THE COURT: Does the defense intend to cross  
12 individual one on the OSHA scheme? I can see you just  
13 eliciting that he did this with others without having to get  
14 out that Ragano was part of it, but if the defense is going to  
15 cross-examine him on some aspect of that because it shows oh,  
16 you know, you were willing to create, you know, public danger,  
17 these OSHA certifications are really important, and to not --  
18 and to play games with that, that really goes to the public  
19 well-being and you're a heartless individual, that would then  
20 open the door to bring Ragano into that scheme.

21 MR. STEIN: Judge, we don't have any such plan. To  
22 the extent that it comes up, it's relevant to individual  
23 number one's credibility because this was a fraudulent scheme  
24 which by its nature relates to individual number one's  
25 credibility. That's the extent to which we intend to explore

1 it.

2 As far as I'm concerned, Mr. Ragano's name doesn't  
3 have to be mentioned at all. In terms of the OSHA scheme, the  
4 individual number one is going to admit that he pleaded guilty  
5 to this and that it involved fraudulent conduct, which relates  
6 to his credibility.

7 THE COURT: I don't see why Ragano's role in that is  
8 relevant for rehabilitation purposes.

9 MR. REICH: I think in a couple of ways, Your Honor.  
10 First, to leave the jury with the impression that individual  
11 one is not believable or doesn't come to this with clean hands  
12 because he perpetrated the OSHA scheme without being aware  
13 that Mr. Ragano instructed him to perpetrate the OSHA scheme,  
14 I believe would leave the jury with a misimpression of the  
15 nature of the relationship between individual one and Mr.  
16 Ragano.

17 Mr. Ragano instructed individual one to be the  
18 go-between in the loan collection, only after he created this  
19 environment of trust where he instructed individual one to do  
20 the fake OSHA certifications. That really lays the groundwork  
21 for how individual one and the defendant came to start  
22 committing crimes together. The OSHA scheme is really one of  
23 the very first things that individual one does for Mr. Ragano,  
24 setting the backdrop for what he ultimately does that's  
25 relevant to the loan.

1           And, obviously, the OSHA scheme was executed while  
2 individual one was working at the OSHA school for Mr. Ragano.  
3 There's going to be a lot of discussion of his time at the  
4 OSHA school for Mr. Ragano, how he observed Mr. Ragano, the  
5 way Mr. Ragano conducted himself and discussed things, and  
6 some of the evidence that we alluded to earlier, Your Honor.

7           THE COURT: Where is this in your papers?

8           MR. REICH: Your Honor, in the -- Your Honor, we  
9 alluded to it on page 30, footnote 30, and admittedly, Your  
10 Honor, we did not expand on it at that time. But this is  
11 something that has come to light as we prepared for trial and  
12 prepared with individual one for trial. So that's why I  
13 wanted to raise it for Your Honor.

14           THE COURT: I'll sort of revisit this based on the  
15 nature of the cross-examination, but I mean it just strikes me  
16 that if it becomes a significant portion of the cross of this  
17 individual, then I think it's fair game to -- at that point,  
18 then, the instruction that I would give the jury, if I do  
19 think that, is that I have precluded the government from going  
20 into this in direct so that there's not an impression that the  
21 government was somehow trying to limit that witness'  
22 testimony.

23           So if it's a limited cross on this topic, then I  
24 don't believe -- I don't see a need to implicate Mr. Ragano in  
25 it. If it becomes a larger theme of the cross and I find that

1 it does open the door, then I will instruct the jury that the  
2 government -- that I had not permitted the government to deal  
3 with that topic on its direct but that in light of the  
4 cross-examination, I'm now allowing the government to elicit  
5 that testimony.

6 MR. STEIN: Understood, Judge. As I said before, my  
7 intention is to limit it to impeaching individual one's  
8 credibility because he engaged in fraudulent conduct, which is  
9 inherently dishonest, period.

10 THE COURT: To the government, I mean footnote six,  
11 there are two sentences there. One links Ragano to the  
12 business but doesn't link Ragano to individual one's  
13 fraudulent scheme. What did Ragano plead to in front of me?

14 MS. LASH: He pled to false identification documents  
15 in connection to the OSHA scheme and to extortionate  
16 collection of credit conspiracy.

17 Understood, Your Honor. So the Court and defense  
18 knows, how we expect this will come out in trial is individual  
19 one will testify about his relationship with the defendant,  
20 mostly through the course of seeing him multiple times a week  
21 at the OSHA school, comments that he made to him, and then he  
22 will later testify that he pled guilty to making fraudulent  
23 OSHA certifications.

24 If he's asked on cross-examination and discussed  
25 about his credibility in connection to those, I expect he will

1 say he did it at the direction of John Ragano. So I want to  
2 flag that for the Court and counsel before we walk into that,  
3 which is why we think it's a little simpler to do it in a  
4 measured fashion during individual one's direct, but we can  
5 see how it plays out.

6 MR. WOMBLE: Yes, Your Honor. Ken Womble for Mr.  
7 Ragano. I think what Your Honor said about the tent being not  
8 without limits, what we've been discussing so much at this  
9 conference is conduct that occurred in 2021 that was part of  
10 the Alimena case.

11 And while we recognize the government's theory that  
12 the context from that is relevant to the charges here, if the  
13 government and, again, we're kind of flying blind, we haven't  
14 seen 3500 material. So a lot of these arguments that we've  
15 had to make are being made in the abstract without reference  
16 to specific evidence.

17 But if the government is going to be able to provide  
18 evidence that individual one was, indeed, the go-between for  
19 Mr. Ragano and John Doe in the, I guess, the original --  
20 because there is a temporal break here of I believe a year and  
21 a half or so between the Alimena case and when contact was  
22 resumed between John Doe and Mr. Ragano.

23 If the government is talking about having to provide  
24 context for the relationship, it would seem that if they can  
25 provide evidence that establishes that individual one was the

1 go-between for the loan between Mr. Ragano and John Doe, it  
2 doesn't really seem like there needs to be this fulsome, I saw  
3 him do this at the OSHA school, I saw him do this at the OSHA  
4 school. It really that tent.

5 THE COURT: Right now I certainly have not ruled  
6 that the OSHA portion of his guilty plea. The only portion of  
7 his guilty plea that I was thinking about and that I said is  
8 admissible has to do with the extortionate scheme, with the  
9 extortion scheme, not the OSHA.

10 So the fact that individual one may testify that he  
11 spent time with Ragano at this OSHA place, unless it comes out  
12 somehow, there is no evidence that Ragano was implicated in  
13 the OSHA scheme, as well.

14 However, as the government just noted, questions  
15 that you asked him, individual one, may open the door to that.  
16 You're on notice of that and if he says something like yeah,  
17 and John was all over me to do that, then you're stuck with  
18 that answer.

19 MR. WOMBLE: Of course. That's completely  
20 understood. It's just to provide context from our point of  
21 view, and Your Honor referenced this earlier, is that the  
22 communications between individual one to John Doe are really  
23 the critical nexus and connective thread.

24 While that does allow for certain evidence to, I  
25 guess, support that individual one presumably has a basis for

1 saying those things, to continue to kind of -- to spend what  
2 appears to be a fairly significant portion of the trial in  
3 2021.

4 THE COURT: The government should be allowed, and it  
5 will be allowed, to establish the nature and the bona fides of  
6 the relationship between individual one and Mr. Ragano,  
7 because since individual one was functioning as a conduit, as  
8 alleged, for the loan, it's important from an evidentiary  
9 perspective to establish why there was that level of trust  
10 between individual one and the defendant.

11 MR. WOMBLE: Just to put a period on this, from our  
12 perspective we do see that there is a -- this is a difficult  
13 case to kind of wrap one's head around because it is a  
14 continuation of another case. That being said, that original  
15 case was dealt with with a guilty plea. There was a break,  
16 and while there is contextual threads that connect these two,  
17 we just want to --

18 THE COURT: There was a temporal break but there was  
19 never a -- this not a new loan.

20 MR. WOMBLE: I believe that that's correct.

21 THE COURT: As alleged. I know less than you do.

22 MR. WOMBLE: Just to make sure that when there is  
23 all of this evidence from individual one about 2021, and that  
24 is firmly within the Alimena case, that the communications to  
25 John Doe that occurred at that time within the structures of



1 the Alimena case to then kind of provide context for what  
2 happens later, the government hasn't charged back to that  
3 point and so that --

4 THE COURT: My expectation is that the government  
5 will lay the amount of evidence that it believes is necessary  
6 to establish the nature of the relationship between individual  
7 one and the defendant, and then move on from there. That's  
8 not going to be -- that's not going to be the sum total of the  
9 testimony.

10 Certainly it's a portion of the testimony but I  
11 assume there are other things that John Doe, not John Doe,  
12 that individual number one is going to say.

13 Any other motion?

14 MR. REICH: One last one, Your Honor. This is at  
15 page 26, footnote 5. The government discusses some of the  
16 items that were found on the defendant's phone that was  
17 monitored by pretrial services.

18 THE COURT: My internal note to myself on this  
19 footnote is shouldn't the parties be able to stipulate to some  
20 of this, as opposed to just having to -- why don't the parties  
21 meet and confer on this one, since the defendant did not  
22 affirmatively address this point. So I don't want to just  
23 give a ruling without their response to it. Why don't you  
24 meet and confer with it.

25 MR. WOMBLE: Your Honor, if I could briefly respond

1 but also ask a question. What I assume is that the government  
2 intends to provide this in the context of John Ragano looking  
3 at articles about himself.

4 THE COURT: Part of 849 is the defendant's own sort  
5 of knowledge about how he is perceived under 849.

6 MR. WOMBLE: Yes. I think in the context of -- I  
7 don't know if I have had a federal client who has not gone on  
8 to Google or had articles sent to him or her in the context of  
9 their case.

10 So I do want to kind of bring up that it might be  
11 worthwhile consider avoiding -- while the government is saying  
12 this provides him with this information, then we're at a loss  
13 to point out that this is incredibly common behavior by a  
14 criminal defendant.

15 THE COURT: Before I am compelled to rule, I'm  
16 asking the parties to see if there is a sanitized version of  
17 footnote five that could be stipulated to. Since I'm already  
18 allowing evidence about, for example, his association with  
19 organized crime, I can envision a stipulation that speaks to  
20 following his arrest, if called to testify, blah, blah, blah  
21 would testify that on his phone were images or internet  
22 searches regarding allegations of the defendant's involvement  
23 with organized crime, or something sanitized, but that gives  
24 the gist of the items that were on the phone.

25 MS. LASH: Understood, Your Honor. The parties will

1 discuss it. Thank you.

2 THE COURT: Just a word to the wise, footnotes are  
3 not the place to put substantive applications.

4 MR. REICH: Completely understood, Your Honor.  
5 Thank you.

6 THE COURT: That was my note on that one. Let's  
7 turn to logistics. Like I said, start on the seventh. I  
8 don't believe we need more than two alternates. Does anyone  
9 view it differently?

10 MS. LASH: No.

11 THE COURT: So the way I do jury selection, then, is  
12 we need to get to a qualified panel of 32. That's 12 jurors,  
13 6 peremptories for the government, 10 peremptories for the  
14 defense. That's 28. Then we need to deal with our  
15 alternates, so two alternates. That's 30. And then each side  
16 gets an alternate peremptory since we're doing two or less.  
17 Do the parties agree to that math?

18 MS. LASH: Yes, Your Honor.

19 MR. STEIN: Yes, Judge.

20 THE COURT: Any issue with having two alternates?

21 MR. STEIN: No.

22 MS. LASH: None from the government.

23 THE COURT: The way I do the jury selection is I've  
24 gotten your proposed voir dire questions. I'll create my own  
25 set, and what I do is I bring in the entire venire. Let's say

1 my voir dire questions are 25 questions, I'm just making that  
2 up, but that's roughly what it will be. Each juror will have  
3 a number that's associated with them. And then I'll ask  
4 questions in a way that are intended to elicit an affirmative  
5 response.

6 So do you or any close family members work in  
7 law enforcement, and by law enforcement I mean the FBI,  
8 whatever my description is. If eight individuals raise their  
9 number, I have them keep their numbers up. I call them out so  
10 that the reporter can get them, but also so that you have  
11 them, and we go through all those 25 questions.

12 Then what I do is I bring in each juror  
13 individually. So it's the rare individual who doesn't raise  
14 their number, but even if they didn't raise their number to  
15 any of those questions I still bring them in. Bring them in,  
16 put them in that first seat in the jury box.

17 I go through my notes and I see, oh, Juror 18, I see  
18 that you answered yes to question five about law enforcement,  
19 who is in law enforcement. I go through to give you enough  
20 information to decide whether you want to make a cause  
21 application.

22 Once I've gone through those questions where he or  
23 she has raised their number, then I also will ask about ten  
24 basic pedigree questions in order to allow you to have more  
25 information for purposes of peremptories. So what

1 neighborhood do you live in, own or rent, sources of news,  
2 other adults in your household, what do they do for a living,  
3 those kind of questions.

4 And then once I've gone through the questions, I'll  
5 ask that juror to just step outside in the hall for a second.  
6 Mr. Neptune will take them there and wait. I'll ask the  
7 parties if there's any cause basis. If there isn't, that then  
8 is a qualified juror and we keep doing that until we get to  
9 32.

10 Once we get to 32, depending on what time of day it  
11 is, whatever, you will then have your qualified panel. I'll  
12 give you a sheet, each of you a sheet to exercise your  
13 peremptories on. You'll do your peremptories simultaneously  
14 and blind to each other. The government will have a sheet  
15 with six lines on one side and one on the other for its  
16 alternate, and the defense will have a sheet with ten boxes on  
17 one side and one box on the other for the alternate.

18 You then for your 6 and 10 peremptories for your  
19 main panel, you should only exercise those up through a juror  
20 slotted in the 28th slot. And then for your peremptory for  
21 your alternate, you should only exercise that with respect to  
22 the jurors slotted into numbers 29 through 32.

23 You'll hand those up. If there is overlap in the  
24 peremptories of the initial panel, let's say you overlapped on  
25 one of them, meaning that there's one left over juror in slots

1 1 through 28, that individual will be dismissed and your  
2 lowest 12 numbers will be your 12 main jury.

3 We'll do the same exercise with the alternates. And  
4 your lowest two, even if you exercised -- let's say you  
5 decided to strike the same alternate and it's number 31, then  
6 numbers 29 and 30 will be your alternates.

7 Any questions about that process?

8 MR. STEIN: Judge, I don't have any questions about  
9 that process. I have a question about one of the subjects  
10 that you touched on when you said you would ask, which I  
11 assume most, if not all judges would ask, about their sources  
12 of news.

13 In this particular case there has been some  
14 reporting of it publicly and it's been covered to some extent.

15 THE COURT: That's going to be in my cause  
16 questions, not in my pedigree questions.

17 MR. STEIN: I don't want this to come out in the  
18 presence of jury selection. So there's been some reporting of  
19 this in Gangland News. So I don't want any prospective juror  
20 to know that this particular case has been reported in  
21 Gangland News, which, perhaps, has its own connotation.

22 THE COURT: My question is going to be a generic  
23 question about is anyone aware of this case, have they seen it  
24 in any -- I'm going to ask a blanket awareness of the case, as  
25 opposed to making any reference to it having been picked up by

1 the news.

2 MR. STEIN: I just want to make sure for anybody who  
3 actually reads that, that they're not going to say I read  
4 about this in Gangland News in front of all the prospective  
5 jurors.

6 THE COURT: No, no, no. The initial process is just  
7 hold up your number so that I can jot down that you answered  
8 affirmatively to a question, and then it's only going to be in  
9 here one on one without anyone else. So there will be no  
10 spillover.

11 MR. STEIN: So the rest of the panel will be out in  
12 the hallway?

13 THE COURT: In the hallway or across if that  
14 courtroom is empty.

15 MR. STEIN: Understood, Judge.

16 THE COURT: That's it for jury selection. Any  
17 questions about that process?

18 MS. LASH: No, Your Honor.

19 THE COURT: For trial logistics, I think what I'm  
20 going to tell the jury is that the trial is expected to last  
21 about a week, but obviously that depends on deliberations, but  
22 at a minimum a week. That way if someone has something  
23 Monday, the 15th, Monday, the 14th, that's a holiday. Let's  
24 say they're going away and not coming back until the middle of  
25 that week, that might be a basis to excuse that juror for

1 cause just on the outside chance that we spillover.

2 In terms of the schedule, my normal day would be  
3 start -- I'd like to have the jury, if they're here, ready to  
4 go by 9:30. I don't think that -- I'm not going to expect the  
5 government to have any witnesses on that Monday. I just think  
6 it's going to take, even if it goes quickly just to qualify  
7 32, it just takes a while. I'm hoping we can do it in the  
8 day. You never know.

9 So the parties should be expected to, and I'm not  
10 going to force you to cram your openings at 4:00 or something.  
11 So if we're done at 4:00 with jury selection, we'll start the  
12 trial day on Tuesday morning. Obviously we can talk on that  
13 Monday if it looks like we're not going to have a jury until  
14 Tuesday morning. But for purposes of that Monday, no  
15 expectation of jury address or witnesses.

16 My normal day is 9:30 to 5:30. Actually on that  
17 Monday, I need to leave by 5:00 because I teach a class. So  
18 that will only affect that one Monday. Then Tuesday, the  
19 eighth, let's go 9:30 to 5:30; Wednesday, the 9th, 9:30 to  
20 5:30; Thursday, the 10th, start at 9:30 but that's the day of  
21 someone's investiture at 4:00 that day, unless it's too huge  
22 an inconvenience to the parties I'd like to attend, but let's  
23 play that by ear. And Friday the 11th, that evening, is Yom  
24 Kippur. So we'll go 9:30 to 1:30 that day.

25 To the extent the trial needs to go into the next



1 week, like Mr. Stein noted, Monday is a holiday, the 14th. So  
2 we'll pick it up again on the 15th, from 9:30 on. In terms of  
3 breaks, pretty standard. I take a morning break, afternoon  
4 break, and a lunch break around 1:00. If there's a natural  
5 break at 12:30 and the next witness is going to be a lengthy  
6 witness or 12:45, we can think about lunch then.

7 MR. STEIN: Judge, so during the morning before the  
8 lunch break you do take a break?

9 THE COURT: I'll take one break.

10 MR. STEIN: And in the afternoon, as well?

11 THE COURT: Same. Another mid-afternoon break.

12 With respect to trial materials, if converted to paper, how  
13 much paper does the government expect so I can decide whether  
14 I want a paper set?

15 MS. LASH: Your Honor, with respect to the  
16 witnesses, the fact witnesses that we expect to testify, with  
17 the exception of individual one, I think the paper portion of  
18 that is confined enough that we can provide binders that would  
19 not be overwhelming.

20 THE COURT: I just need two sets, one for me and one  
21 for Mr. Neptune and my clerk.

22 MS. LASH: In connection with individual one, he  
23 obviously has statements that were gathered by the government  
24 in the prosecution of the Alimena case that we intend to  
25 specify to the defense, although we wouldn't intend to print

1 because that would be a really voluminous set of paper and  
2 also most of it is actually audio recordings.

3 So as to him, we'd ask that we can just provide a  
4 list of the materials from Alimena or separately on a hard  
5 drive.

6 THE COURT: That's fine. Yes. Obviously if there  
7 are any other audio visual things, just make sure -- I know  
8 you've tried a case in this courtroom, Ms. Lash, but if  
9 there's anything else, just coordinate with Mr. Neptune in  
10 terms of making sure we have whatever we need.

11 Like I said with respect to the jury charge, my goal  
12 is to get you at least my initial draft by that Friday, the  
13 fourth at the latest. We can talk about when to have the  
14 charge conference, but it will probably be -- obviously it  
15 will depend on how quickly the evidence comes in, but it will  
16 be maybe as early as that Tuesday in the evening, depending on  
17 when we break. And the way I do my charge conference is the  
18 government will go first and tell me first page that they have  
19 some comment on, and then I'll turn to the defense. So if  
20 they say Your Honor on page 10, I'll turn to you, Mr. Stein  
21 and Mr. Womble, and say do you have anything before page 10.  
22 If you do, we'll go there. If not, we go to page 10. And we  
23 keep going until we get to the end of the charge.

24 MR. STEIN: I'm sorry, Judge. When do you  
25 anticipate the charge conference?

1           THE COURT: Maybe as early as Tuesday evening. My  
2 plan would be if we broke around, depending on the witness, if  
3 we broke around 5:00 that day or 5:15, we'd stay here.  
4 Obviously I know by keeping your client it needs to -- it will  
5 hold up the entire bus, but it will depend on how much we have  
6 to cover in the charge conference. Sometimes you can do a  
7 charge conference in 30 minutes. Sometimes you need  
8 two-and-a-half hours. It will depend. At a minimum we might  
9 just start and get moving on it.

10           MR. STEIN: So we should have the charge conference  
11 you're estimating -- I'm sorry. We should have the draft of  
12 the charge on Friday, the fourth?

13           THE COURT: That is my goal to get it to you so at  
14 least you have it over the weekend. I think that's all I have  
15 for logistics. Anything else from either party? From the  
16 government?

17           MS. LASH: No, Your Honor.

18           THE COURT: Mr. Stein?

19           MR. STEIN: Yes, Judge. I don't know if you wanted  
20 to take a break.

21           THE COURT: How long? Is it going to be a long  
22 question? We can take a break if you want.

23           MR. STEIN: A couple of points. It's not for my  
24 benefit. It's court personnel.

25           THE COURT: Let's be back at 20 after.

1 (Recess taken.)

2 MR. STEIN: Judge, under the schedule you set up,  
3 the exhibits are scheduled to be produced September 30th?

4 THE COURT: Government exhibits and exhibit list,  
5 September 30th, yes.

6 MR. STEIN: There's a week there where we have an  
7 opportunity to object to exhibits. And I had a recent  
8 discussion with Ms. Lash about this, how it's going to be  
9 dealt with because with that one week window it doesn't give  
10 us a lot of time, frankly.

11 I don't know how many exhibits there are going to  
12 be. Obviously there's the recordings, but there's some  
13 specific exhibits that I've already discussed with Ms. Lash  
14 about how to deal with this. I think we need some opportunity  
15 to deal with that in advance of the 30th.

16 Just by way of example, Judge. They sent us  
17 originally a redacted form of text messages going back to  
18 2021. Then the government agreed to unredact them, the text  
19 messages, to some extent and there are text messages, just to  
20 generically characterize them, having to do with the issuance  
21 of a loan to begin with. So they're all 2021.

22 Some of them are with John Doe, some of them are  
23 with Mr. Ragano, some of them are with an individual who was  
24 charged in the original Alimena case. There's a question as  
25 to whether or not these are relevant at all. So I'm not here

1 to argue that now at all, but it seems we need some  
2 opportunity more than just that week when we'll be pretty  
3 busy.

4 MS. LASH: If I could be heard, Your Honor.

5 THE COURT: Yes.

6 MS. LASH: I think, as I told Mr. Stein and Mr.  
7 Womble, those messages were produced in discovery in a letter  
8 that said these are produced to you under Rule 16 and pursuant  
9 to early 3500 disclosure so they would have them. I don't  
10 think the government has necessarily decided that those  
11 messages will be marked as exhibits. I understand that that's  
12 just an example of a category that Mr. Stein and Mr. Womble  
13 may want to file objections to.

14 What I hear him saying now, which I didn't  
15 understand to be the case before, is that a week is not enough  
16 time for him to object to exhibits here. Now, I want to say  
17 that when we discussed the schedule, we had initially foresaw  
18 producing exhibits earlier to deal with that time. And Mr.  
19 Stein and Mr. Womble asked us to instead produce the 3500  
20 earlier. So the schedule is partially in relation to what  
21 they have requested.

22 I think putting that side, a week is plenty of time.  
23 There are not voluminous exhibits in this case. As Mr. Stein  
24 noted, the audio will certainly be marked as government's  
25 exhibits, as well as materials that we've produced in Rule 16

1 discovery, which they have. There's been a limited number of  
2 productions and it's not that much.

3 THE COURT: Can I interrupt you? With respect to  
4 the audio, I assume it's all -- it's items that we've dealt  
5 with in the two hours that we've just dealt with in limine  
6 motions.

7 MS. LASH: Yes. There's nothing except for the  
8 audio that we've been discussing since the start of the case  
9 here. So that said, first of all, I don't think that there's  
10 that much to review and a week is plenty of time. If they  
11 have objections to exhibits on relevance grounds, we can deal  
12 with that in a week.

13 THE COURT: And you produced that list on the 27th?

14 MS. LASH: The list of exhibits?

15 THE COURT: Yes. Instead of the 30th. It's that  
16 Friday.

17 MS. LASH: Thank you, Your Honor. I think with the  
18 Court's permission we could certainly produce many of the  
19 exhibits on Friday.

20 THE COURT: Why don't we do that. Why don't you  
21 make a good faith effort to produce some portion of the  
22 exhibit list that's more written in stone by that point, based  
23 on your trial prep, and then the remainder of it by the 30th.

24 MR. STEIN: Judge, let me add. Ms. Lash is correct  
25 about we had agreed to the schedule. For whatever it's worth,

1 frankly, I didn't anticipate that we would be objecting to  
2 exhibits until these text messages started getting produced.  
3 Originally I think it was early in August and the less  
4 redacted version of them afterwards. So I didn't anticipate  
5 this would be an issue.

6 THE COURT: What we're talking about here is  
7 relevance. I think if you get me a chart with a description  
8 of what the thing is and not relevant because, like I don't  
9 need a lot of briefing on a relevance objection.

10 So if you want to put it in a chart for me and give  
11 me a couple of lines of why you think it's not relevant, I can  
12 rule on those as we go.

13 MR. STEIN: That's fine, Judge.

14 THE COURT: Anything else?

15 MR. STEIN: Yes, Judge. So back in February I  
16 brought to the Court's attention Mr. Ragano's medical issues,  
17 and you had directed or asked us to confer with each other  
18 before we brought it to the Court's attention.

19 So I don't know whether the incident yesterday at  
20 the jail has anything to do with this, I suspect it might, but  
21 in any event, as Your Honor may recall from the sentencing of  
22 Mr. Ragano in the Alimena case, as well as Judge Ross' order  
23 that he be released immediately because of the jail dealing  
24 with his medical issues. So for several months now, Mr.  
25 Ragano has been telling me and Mr. Womble about the lack of

1 treatment that he's getting, and it's a serious problem.

2 As Your Honor may recall originally from the  
3 sentencing, maybe not, according to the MDC's doctors he was  
4 literally in danger of going blind in the only remaining  
5 eyesight that he has in one eye. And that was a factor I  
6 assume the Court considered in sentencing back sometime last  
7 year.

8 So Mr. Ragano, I always ask him how are you doing,  
9 John, what's happening with your condition. He's been telling  
10 me for some months now about the lack of medical attention  
11 he's been getting. He has about five or six prescription  
12 eyedrops and he's experiencing a lot of pain to the point that  
13 he's having difficulty sleeping.

14 I don't know whether the accident that happened at  
15 the jail yesterday had anything to do with his vision. It's  
16 certainly possible. This is just an ongoing concern. I'm  
17 raising it at this point because it's just continuing on  
18 without any appropriate attention. At one point some months  
19 ago he was taken to an outside doctor to see an  
20 ophthalmologist, who advised Mr. Ragano in so many words that  
21 he may need surgery.

22 So whenever we speak to him, we ask him what's  
23 happening with seeing the outside ophthalmologist. He puts in  
24 numerous requests and he hears nothing and I don't want this  
25 to be a problem at the trial when I have a client in pain.



1 It's not right, frankly.

2 THE COURT: I'll give the government an opportunity  
3 to reach out to the MDC. When was the last time you raised  
4 this with the government?

5 MR. STEIN: Friday. Friday because we spoke with  
6 Mr. Ragano that morning in a legal call from the jail, and  
7 I've asked him to be able to document the times that he's put  
8 in a request for medical attention. I don't know what he's  
9 done to cumulate the document, the requests he's put in. It's  
10 just a problem and it's not right.

11 THE COURT: All right. I agree. If he's not  
12 getting the necessary medical treatment, of course it's not  
13 right. If the government can look into this starting today  
14 and get me a letter either by the end of the day on Wednesday  
15 or at some point on Thursday, so Wednesday or Thursday,  
16 Thursday at the latest, letting me know what medical  
17 treatments the defendant has requested and, in particular, the  
18 eye care issue and what the current status of that is based on  
19 the medical staff at MDC.

20 MR. STEIN: Judge, in light of your projection that  
21 we may not start taking testimony until Tuesday morning, it's  
22 possible the problem I raised earlier about family members  
23 being able to attend may become academic. I don't know  
24 whether they'd be here during jury selection, frankly. I  
25 thought we might be starting testimony that afternoon.

1           THE COURT: We'll start testimony the Tuesday  
2 whenever we have a jury. So assuming we have a jury Monday,  
3 we'll start -- nothing will happen on Monday, other than jury  
4 selection is the easiest way to say that. Anything else?

5           MR. STEIN: No, Judge.

6           THE COURT: All right. Anything from the  
7 government?

8           MS. LASH: No, Your Honor. Thank you.

9           THE COURT: I think time is excluded on this case  
10 through the trial date?

11          MS. LASH: It is, Your Honor.

12          THE COURT: So thank you all, and obviously if you  
13 need any -- you'll put in a letter regardless of what the  
14 status is with the medical treatment, and if there's more that  
15 I need to do in that respect, let me know. So to the extent  
16 you can make that a joint letter and coordinate, and if  
17 there's some relief that you need, if you could put it in that  
18 letter.

19          MR. STEIN: Judge, maybe it would be helpful --  
20 since my client is not here, he's not in a position to sign a  
21 HIPAA authorization. I don't know whether the government can  
22 obtain the records from the jail on their own and send it to  
23 us.

24          THE COURT: I'm not expecting the government to do a  
25 review. If they need to, they can do whatever they want. I

1 wasn't expecting the government to do a review of medical  
2 records, but rather to get a report from the counsel's office  
3 at the MDC that looks into requested medical treatment and  
4 what the plan is for treatment, and in particular the  
5 treatment of the eye condition. That seems to be the driving  
6 concern.

7 MR. STEIN: Okay.

8 THE COURT: Obviously, you'll coordinate if there  
9 are release issues. You can file that letter under seal,  
10 given that it will discuss medical conditions.

11 MS. LASH: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (Proceedings concluded at 1:32 p.m.)

14 - - - - -

15 I certify that the foregoing is a correct transcript  
16 from the record of proceedings in the above-entitled matter.

17 /S/ Nicole Sesta, RMR, CRR  
18 Court Reporter/Transcriber

19 September 15, 2024